

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
February 10, 2009 Session

STATE OF TENNESSEE v. SAMUEL RYAN HAWKINS

Appeal from the Criminal Court for Putnam County
No. 06-0463 David A. Patterson, Judge

No. M2008-01611-CCA-R3-CD - Filed August 11, 2009

In May of 2006, a three-month-old baby was admitted to Vanderbilt Hospital with retinal hemorrhaging and subdural hematomas. After an investigation, Appellant, Samuel Ryan Hawkins, confessed to shaking the baby. As a result, a Putnam County Grand Jury indicted Appellant for aggravated child abuse. Appellant was convicted as charged by a jury and subsequently sentenced to eighteen years to serve at one hundred percent incarceration. On appeal, Appellant argues that the evidence was insufficient to support his conviction. After a thorough review of the record, we conclude that the evidence was sufficient. Therefore, we affirm Appellant's conviction.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES and THOMAS T. WOODALL, JJ., joined.

B.F. "Jack" Lowery and G. Jeff Cherry, Lebanon, Tennessee, for the Appellant Samuel Ryan Hawkins.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; Bill Gibson, District Attorney General; and Anthony Craighead, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Myra Overall operates a daycare in Cookeville. At the time of trial, she had operated the daycare for twelve years. Her daycare is licensed by the Department of Human Services ("DHS"). The victim, L.E.¹, was a child at her daycare. As part of her licensure through the Department of Human Services, Ms. Overall makes notes if there are any injuries out of the ordinary to keep in the

¹ It is the policy of this Court to refer to minor victims by their initials.

children's files. Ms. Overall began caring for L.E. when she was two months old. She also cared for L.E.'s older sibling.

On May 3, 2006, while L.E. was at Ms. Overall's daycare, she was hit by a toy thrown by another child at the daycare. L.E. had a red mark on her cheek, but she did not vomit, become lethargic, become pale or abnormally cry following the incident. Ms. Overall did make a notation of the incident in a file she kept for L.E. On May 12, while L.E. was at the daycare, Ms. Overall called the victim's mother to come and get her. Ms. Overall was concerned because L.E. was not breathing right, was strangely crying, was vomiting, and felt cool to the touch. L.E.'s mother picked L.E. up from the daycare. She later told Ms. Overall that she had taken L.E. to the doctor, and L.E. had a virus.

On May 18, the victim's mother dropped L.E. off at the daycare with instructions that L.E. needed a few more ounces of formula. After having a little over an ounce, L.E. vomited. Ms. Overall checked L.E. L.E. was breathing with a raspy sound and would take three or four shallow breaths in a row and then gasp. Ms. Overall called the victim's mother to come get L.E. to take her to the doctor. While waiting for L.E.'s mother, L.E. became pale and felt "like her temperature was cooling off." When L.E.'s mother arrived it was before 9:00 a.m. She told Ms. Overall that L.E. had a doctor's appointment at 1:30 p.m. Because Ms. Overall was so alarmed by the victim's symptoms, she told the victim's mother that an appointment at 1:30 p.m. was too late. She urged the victim's mother to take L.E. to the doctor immediately.

Dr. Christopher Climaco is a pediatrician in Cookeville, Tennessee. He is L.E.'s pediatrician. On May 12, 2006, the nurse practitioner at Dr. Climaco's practice treated L.E. for vomiting. She was diagnosed as having acute gastroenteritis. On May 18, 2006, Dr. Climaco saw L.E. at his practice. She was lethargic and not interacting well. She did not have a fever. Dr. Climaco was unsure if L.E. was having seizures, but he did note that L.E.'s eyes were rolling back into her head. She was also vomiting. Dr. Climaco was very concerned and admitted L.E. into the hospital at Cookeville. He recommended an MRI. After consulting with a doctor at Vanderbilt Hospital, Dr. Climaco had L.E. transferred to Vanderbilt Hospital. Dr. Climaco believed that L.E. had more than common gastroenteritis. Although he did not contemplate "shaken baby syndrome" at the time, at trial he stated that shaken baby syndrome could have been a possibility. Dr. Climaco was still L.E.'s pediatrician at the time of trial. At trial, L.E. would have been almost two. He testified that L.E. does not act like an average two year old. She does not walk, crawl, or talk. In Dr. Climaco's opinion, L.E. is neurologically impaired. Her speech, motor skills, and vision are all impaired. She can eat, but she cannot feed herself.

Dr. Paulette Johnson is a Pediatric Critical Care Specialist at Vanderbilt Children's Hospital. When an injured child comes into the Critical Care Unit, Dr. Johnson is the presiding doctor over the team of physicians that treat a child in the unit. She was the team leader when L.E. arrived at Vanderbilt on May 18, 2006. Upon her arrival, the doctors deemed L.E. critically ill. They discovered that L.E. had two subdural hematomas. A subdural hematoma is bleeding that occurs below the top layer of the covering of the brain. It is life-threatening if left untreated. After ruling

out other medical possibilities, the doctors concluded that L.E.'s diagnosis was non-accidental trauma.

Non-accidental trauma is an injury that is not a typical childhood injury occurring from normal activity. One fact that led to this conclusion is that L.E. was three months old, and a three-month-old child is not mobile. They further concluded that it was most likely a shaking injury because there were no marks or lacerations on L.E.'s scalp to show that her head had been hit by an object. When a shaking injury occurs, the force of the shaking causes the brain to move back and forth within the skull. The motion is known as acceleration/deceleration motion. When the force is enough to cause such a movement, the blood vessels tear and cause a hematoma. The shaking that would cause such an injury is equivalent to what would occur in an automobile accident.

Dr. Johnson analyzed the CT scan taken at the hospital at Cookeville and the CT scan taken at Vanderbilt. A comparison of the two scans showed that the hematoma was expanding. This means that the hematoma was continuing to bleed. The bleed was considered an "acute bleed" which means that the bleeding began within the day or so before the examination. L.E. also had a fracture to one of her tibias and had retinal hemorrhages.

Dr. Sean Donahue is a Professor of Ophthalmology and Visual Sciences at Vanderbilt Hospital. Part of his practice focuses on pediatric ophthalmology. He is part of the child abuse team. Dr. Donahue treated the victim when she was brought to Vanderbilt Hospital. When Dr. Donahue examined photographs of L.E.'s retinas, he found extensive hemorrhaging. He testified that the most common cause of retinal hemorrhaging for L.E.'s age is abuse, more specifically, shaken baby syndrome. It is possible to have hemorrhaging from certain diseases but not to the same extent as present with L.E. When a child is otherwise healthy, the main cause of retinal hemorrhaging is non-accidental trauma. L.E. was evaluated for other causes of the retinal hemorrhaging, and other medical causes were ruled out.

Dr. Donahue testified that the medical community is unsure exactly when during a shaking episode the hemorrhaging occurs. There is debate as to whether it is the actual shaking or if it is the brain's impact within the victim's skull as a result of the shaking that causes the injury. This injury occurs in children under a couple of years old because they lack head control. Dr. Donahue also ruled out any possibility that the hemorrhaging could have occurred during a vaginal birth.

L.E.'s optic nerve was also injured as a result of the episode that caused the retinal hemorrhaging. Following an injury to the optic nerve, it becomes paler over the course of a few weeks. Dr. Donahue testified that the damage occurred before he saw L.E. and that the victim's optic nerve was paler in each subsequent examination. As a result of these injuries, L.E. is permanently and severely visually impaired.

When asked if the presence of a subdural hematoma and a distal tibial fracture suggested anything, Dr. Donahue stated that it would increase his suspicion that there had been a non-accidental trauma. When asked if a care giver's confession of shaking the child would be consistent

with the eye injuries, Dr. Donahue replied that it would be. Dr. Donahue also stated that there is no question in his mind that L.E. was shaken.

On cross-examination, Dr. Donahue stated that there have been cases where retinal hemorrhages have been caused by accidental trauma. However, the hemorrhages caused by accidental trauma are different from those caused by shaken baby syndrome. Dr. Donahue then agreed that it is more likely than not that L.E.'s injuries were caused by non-accidental trauma. He stated that he was "very close to certain" that the injuries were caused by non-accidental trauma. Dr. Donahue stated that when the injuries seem suspicious the child abuse team looks at the injuries from the different sub-specialties to determine the nature of a victim's injuries and whether the child is at risk for further abuse. He stated that he looks at the notes and charts of other members on the team as well as other doctors who are treating the patient. Dr. Donahue stated that he concluded that the retinal hemorrhaging was caused by non-accidental trauma when he viewed pictures of L.E.'s retinas and examined them himself. The extent of the hemorrhaging stood on its own to support his diagnosis. The notes and charts of the other doctors treating the victim were consistent with his diagnosis and provided additional support.

Dr. Deron Sharpe was a pediatric neurology resident at Vanderbilt Hospital when the victim was brought in for examination. When he examined her in the intensive care unit she was expressing severe encephalopathy. Encephalopathy refers to the cognitive and motor properties of the brain. L.E.'s alertness was severely subdued. Dr. Sharpe testified that he recalled that the victim did not respond to anything from sight during his neurological testing. Dr. Sharpe also referred to notes taken by other doctors treating the victim. Dr. Sharpe noticed that L.E. had severe retinal hemorrhaging and that she had something wrong with her brain. CT scans showed that L.E. had a superficial hemorrhage on top of her brain, as well as, swelling within her brain in a multitude of areas. He determined that L.E. had a severe brain injury. He also opined that the image taken at the time did not "portray the severity" that the examination did. Dr. Sharpe testified that there was dead or dying brain tissue at the time of the examination. The type of force that could cause such an injury would be very violent and would be on the level of a car accident or falling from a three story building. Falling off of a couch, bed, or out of a crib would not cause this type of injury and neither would getting hit in the face with a plastic toy. Such an injury would be apparent within forty-eight hours. Dr. Sharpe examined L.E. the day before trial. He stated that she is severely, neurologically injured. She is not able to walk or feed herself. She cannot speak more than one word.

On cross-examination, Dr. Sharpe stated that a subdural hematoma can cause vomiting and lethargy. He also stated that it is possible that L.E. had a pre-existing hematoma before the one he saw during his examination. If there was a pre-existing hematoma, a new injury could cause it to rebleed. Dr. Sharpe reemphasized that the subdural hematoma he saw upon his examination was acute. Based upon the blood that was showing up, Dr. Sharpe estimated that the injury had to have occurred within twenty-four to forty-eight hours to her being admitted to the hospital.

Following L.E.'s examination and admittance to the hospital. Ms. Overall was visited by DHS. She was informed that she had to close the daycare until the investigation was completed. The daycare was closed for two days and then reopened.

Detective Greg Cooper was a criminal investigator with the Putnam County Sheriff's Department at the time of the incident. He was the lead investigator of the case at hand. He received a call from Vanderbilt Hospital on the afternoon of May 18, 2006, regarding L.E. On May 22, 2006, Detective Cooper interviewed Ms. Overall who was fully cooperative. Ms. Overall related an incident from May 3, 2006, when a child at the daycare threw a toy, and it hit L.E. in the face. On May 12, 2006, Ms. Overall called the victim's mother to come pick up L.E. because she vomited while at the daycare. On May 23, 2006, Detective Cooper and Jennifer Fisher with the Department of Children's Services ("DCS") interviewed Appellant and his girlfriend, the victim's mother, in connection with the victim's injuries. The purpose of the interview was to see if Appellant or the victim's mother knew what had happened. Detective Cooper spoke with them separately. Appellant and the victim's mother were not under arrest at the time, and Detective Cooper did not give them their Miranda warnings. At the time of this interview, Detective Cooper had been told that the victim had a serious head injury and possible brain damage. At the interview, Appellant seemed detached. He was not crying; he was not angry. Appellant gave no explanation whatsoever as to how the injuries could have occurred. When the interview concluded, Appellant was free to leave. Detective Cooper also interviewed the victim's mother.

Jennifer Fisher with DCS also testified at trial. She investigates allegations of child abuse and neglect. L.E.'s case was referred to Ms. Fisher on May 19. She went to Vanderbilt Hospital to see the victim. She spoke with Appellant at the hospital. He made no explanation as to how L.E. sustained her injuries. Ms. Fisher also went to the home that Appellant and the victim's mother shared. When she interviewed Appellant on May 23, she informed him that if the cause of the injury could not be determined, the children would have to come into State custody. Appellant still offered no explanation for the injury. Ms. Fisher also informed the victim's mother that the children would come into State custody if the cause of the injury was not determined.

Detective Cooper was not satisfied with his interviews of Appellant and the victim's mother. He arranged a "technical interview" on May 24. This interview was held in the Tennessee Bureau of Investigation ("TBI") office in Cookeville. Appellant and the victim's mother came in their own car. Detective Cooper stayed in the building while Special Agent Skip Elrod, an agent with the TBI, interviewed Appellant in a separate room.

Agent Elrod conducted the technical interview of Appellant. Agent Elrod gave Appellant his Miranda warnings. Appellant signed a waiver of his Miranda rights. At the end of the interview, Agent Elrod told Appellant that he did not believe Appellant's story and believed that Appellant was involved with the victim's injuries. Appellant became remorseful and upset. Appellant told Agent Elrod that he had lost his temper and shaken the baby in the swing.

Agent Elrod came out of the room and told Detective Cooper that Appellant wanted to speak with him. When Detective Cooper entered the room, Appellant was crying and “seemed to be in pretty bad shape.” Detective Cooper walked Appellant to another room and read him his Miranda rights. Detective Cooper took a statement from Appellant where Detective Cooper transcribed what Appellant told him. Detective Cooper would write down what he heard, and he would read it back to Appellant. In his statement, Appellant said L.E. was in the baby swing and vomited on herself. Appellant called the victim’s mother for help, but she did not answer. A few minutes later, the victim’s mother asked what he needed. He said he needed help. The victim’s mother screamed at him, and he threw the baby car seat against the wall. He was still angry, and L.E. was crying in the swing. Appellant stated, “I grabbed the swing and shook it with [L.E.] in it and yelled stop crying. I realize that I shook her too hard.” At the conclusion, Appellant signed and dated the statement.

In June 2006, the Putnam County Grand Jury indicted Appellant for one count of aggravated child abuse. A jury trial was conducted on December 12 and 13, 2007. At the conclusion of the trial, the jury convicted Appellant of one count of aggravated child abuse. The trial court held a separate sentencing hearing where Appellant was sentenced to twenty years as a Range I offender to serve one hundred percent of his sentence as a violent offender. Subsequently, Appellant filed both a motion for new trial and a motion for reduction of sentence. The trial court denied Appellant’s motion for new trial. However, Appellant was successful on his motion for reduction of sentence, and the trial court reduced Appellant’s sentence to eighteen years to serve one hundred percent as a violent offender. Appellant filed a timely notice of appeal.

ANALYSIS

On appeal, Appellant argues one issue: whether the evidence was sufficient to support his conviction. Appellant argues that there was not a sufficient link between the testimony of the doctors and Appellant’s confession that he shook L.E. to prove that the shaking caused the injuries. The State argues that the evidence was sufficient to support Appellant’s conviction.

When a defendant challenges the sufficiency of the evidence, this Court is obliged to review that claim according to certain well-settled principles. A verdict of guilty, rendered by a jury and “approved by the trial judge, accredits the testimony of the” State’s witnesses and resolves all conflicts in the testimony in favor of the state. *State v. Cazes*, 875 S.W.2d 253, 259 (Tenn. 1994); *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). Thus, although the accused is originally cloaked with a presumption of innocence, the jury verdict of guilty removes this presumption “and replaces it with one of guilt.” *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). Hence, on appeal, the burden of proof rests with the defendant to demonstrate the insufficiency of the convicting evidence. *Id.* The relevant question the reviewing court must answer is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. *See* Tenn. R. App. P. 13(e); *Harris*, 839 S.W.2d at 75. In making this decision, we are to accord the state “the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom.” *See Tuggle*, 639 S.W.2d at 914. As such, this Court is precluded from reweighing or reconsidering the evidence when evaluating the convicting proof. *State v. Morgan*, 929

S.W.2d 380, 383 (Tenn. Crim. App. 1996); *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Moreover, we may not substitute our own “inferences for those drawn by the trier of fact from circumstantial evidence.” *Matthews*, 805 S.W.2d at 779. Further, questions concerning the credibility of the witnesses and the weight and value to be given to evidence, as well as all factual issues raised by such evidence, are resolved by the trier of fact and not the appellate courts. *State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990).

A criminal offense may be established exclusively by circumstantial evidence. *State v. Tharpe*, 726 S.W.2d 896, 900 (Tenn. 1987); *State v. Jones*, 901 S.W.2d 393, 396 (Tenn. Crim. App. 1995). However, the trier of fact must be able to “determine from the proof that all other reasonable theories except that of guilt are excluded” *Jones*, 901 S.W.2d at 396; *see also, e.g., Tharpe*, 726 S.W.2d at 900.

When taken in a light most favorable to the State, we conclude that the evidence was amply sufficient to support Appellant’s conviction. Appellant stated that he shook L.E. The day after the shaking occurred, Ms. Overall noticed that L.E. was having trouble breathing. L.E. was taken to the hospital in Cookeville and subsequently, admitted to Vanderbilt Hospital. Both Dr. Johnson and Dr. Donahue, who treated L.E. at Vanderbilt, testified that L.E.’s injuries were the result of non-accidental trauma. Each doctor stated that shaking was the likely cause of the injuries. Dr. Sharpe testified that a baby falling out of a crib or off of a couch or bed, or being hit with a plastic toy would not cause an injury to the extent present in L.E. He further stated that such an injury could be caused by force equivalent to falling from a three story building or being in a car accident. Dr. Johnson also testified that there was no evidence of any lacerations or marks to L.E.’s skull to show such an accident. There was also no explanation offered as to L.E.’s injuries other than Appellant’s confession.

Therefore, this issue has no merit.

CONCLUSION

Accordingly, the judgment of the trial court is affirmed.

JERRY L. SMITH, JUDGE